IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 3695 of 2006()

CC.419/2006 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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PETITIONER: ACCUSED

DILEEP D., 'THUSHARA',
NEAR SAMUHAMADAM, TIRUNAKKARA, KOTTAYAM.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: COMPLAINANT AND STATE

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1. AMBIKA DEVI,
AGED 36 YEARS, 'THUSHARA',
TIRUNAKKARA, KOTTAYAM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LATHA
SRI.BIMAL K.NATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT .J

Crl.M.C. No. 3695 OF 2006

Dated this the 18th day of January 2007

ORDER

The petitioner faces indictment in a prosecution under Section 498 A of the I.P.C. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. The investigation commenced on the basis of the F.I. Statement lodged by the second respondent/ defacto complainant/ the wife of the petitioner. Cognizance has been taken by the learned Magistrate. The petitioner has entered appearance before the learned Magistrate. It is submitted at the bar that the charges have been framed already by the learned Magistrate.

2. The petitioner has come to this Court with a prayer that the powers under Section 482 of the Cr.P.C may be invoked to quash the proceedings. What are the reasons? The learned counsel for the petitioner submits that the allegations against the petitioner is that he was guilty of matrimonial cruelty- physical and mental, of the culpable variety against the defacto complainant during the period from 11-9-2000 to 11-2-2006. 11-9-2000 is the date of the marriage. According to the petitioner the allegations are totally false. They are

raised with vexatious intent. Continuance of the prosecution amounts to negation of justice. The learned counsel for the petitioner submits that the second respondent had continued an affair with another person even after her marriage with the petitioner. The petitioner had detected the said adulterous relationship. Thereupon on 11-3-2006 Annexure-B agreement was executed. On the basis of the said agreement on 18-3-2006 a divorce petition (Copy produced as Annexure-c) was filed by the petitioner before the Family Court claiming divorce on the ground of adultery. It is thereafter that on 24-3-2006 the complaint was lodged and the F.I.R was registered. The sequence of events must convey to the court that the allegations are totally false. The powers under Section 482 of the Cr.P.C may hence be invoked. This in short is the prayer.

3. The learned counsel for the respondents on the contrary contends that Annexure-B agreement has been obtained under duress and a complaint about that has been made even in the F.I.Statement lodged by the defactocomplaiinant. She had not agreed for a divorce . The alleged adulterous relationship is totally false. Annexure -B cannot deliver any advantage to the petitioner as the same has been obtained under duress and a complaint that has been made even in the F.I. Statement.

4. I shall scrupulously avoid any detailed discussion on the acceptability of the materials relied on by the rival contestants, lest, it may prejudice the interests of the parties in the trial which is to follow. Suffice it to say that at the moment and with the available inputs and conscious of the nature quality and contours of the jurisdiction of this Court under Section 482 of the Cr.P.C., I find absolutely no justification in the prayer for quashing of proceedings. Whether Annexure-B is voluntarily executed or obtained under duress cannot certainly be resolved at this stage. Consequently no conclusion on crucial facts can be reached on the basis of Annexure-B at the moment. I have been taken through the averments in the F.I. Statement though the same has not been produced in this Crl.M.C. There is no merit in the contention that the allegation raised by the defacto complainant in the F.I. Statement lodged by her even if accepted ,would not reveal an offence punishable under Section 498 A of the I.P.C.

5. It follows from the above discussions that this petition filed under section 482 of the Cr.P.C deserves dismissal.

6. This Crl.M.C. is accordingly dismissed. But I may hasten to

observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate and claim acquittal at the appropriate stage.

R.BASANT , JUDGE

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